IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3297 of 1998

with

Special Civil Application No. 13493 of 2000

and

Misc. Civil Application No. 688 of 1999

in

Special Civil Application No. 3297 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

BR DAVE

Appearance:

Special Civil Application No. 3297 of 1998.

MR ASIM PANDYA for Petitioners

MR PH PATHAK for Respondent No. 1

Special Civil Application No. 13493 of 2000.
MR PH PATHAK for petitioner
MR ASIM PANDYA for respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 17/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. Both these petitions raise common questions between the common parties and arising out of common judgment of the Central Administrative Tribunal, in O.A. No. 177 of 1990, and also upon common request, they are being dispose of by this common judgment.

2. Whether, non-payment of subsistence allowance during the pendency of the departmental inquiry against the employee by the employer, would vitiate the inquiry and, if yes, what should be the amount of payment or compensation during that period? are the main issues in focus in these two petitions.

3. Special Civil Application No. 3297 of 1998 is at the instance of the employer (First Petition), whereas, Special Civil Application No. 13493 of 2000 is at the instance of the employee (Second Petition), arising out of one and same judgment, dated 16.1.1998, rendered by the Central Administrative Tribunal, Ahmedabad Bench ('CAT-A'), in O.A.No. 177 of 1990, whereby, the impugned punishment of termination of service passed against the employee, as a result of domestic inquiry, on the ground of misconduct, misappropriation and lack of devotion to duty, came to be quashed, with a further direction to the disciplinary authority to get a fresh inquiry held from the stage of charge-sheet and to pay lump-sum amount of Rs.3,000/- representing ex-gratia payment (subsistence allowance) for the past period till the impugned order and to continue to pay subsistence allowance during the period of inquiry at the rate not exceeding 50% of the wages which the employee would be entitled to receive had he not been under put off duty, till the inquiry would be completed and final order would be passed by the disciplinary authority and also with a further direction that the claim for backwages and reinstatement from the date he was put off duty shall depend upon the result of the disciplinary inquiry and it shall be the duty of the

disciplinary authority to take decision in this regard on the completion of the disciplinary proceedings and to communicate the same to the employee, without any order as to costs.

4. The petitioner in the second petition is an employee of the petitioners in the first petition, who was appointed as an Extra-Departmental Branch Post Master (EDBPM) on 28.8.1978. The employer held departmental inquiry against the employee on the ground of misappropriation of an amount of Rs.123.30 Ps. from the Savings Bank Account and lack of devotion to duty, in which, the employee was found delinquent. Upon the charges being proved, the disciplinary authority directed removal of the employee from service against which departmental appeal was filed, unsuccessfully, by the employee which was further carried to the CAT-A. The CAT-A accepted the plea of the employee that the entire departmental inquiry stood vitiated since the employee was not paid subsistence allowance during the pendency of the departmental inquiry. Subsistence allowance of Rs.3,000/- is directed to be paid. Fresh inquiry is also directed to be held. The employer has challenged the order of the CAT-A by way of Special Civil Application No. 3297 of 1998 as the order of punishment was quashed on the ground of non-payment of subsistence allowance, whereas, Special Civil Application No. 13493 of 2000 is filed by the employee for full backwages and subsistence allowance during the period he remained under put off duty.

5. In so far as the merits of the first petition of the employer is concerned, we find no substance in view of the settled legal proposition that non-payment of subsistence allowance to the employee, during the period of suspension or put off duty, would vitiate the departmental inquiry. Non-payment of subsistence allowance to a Government employee or servant under suspension, would vitiate the entire inquiry, since the relationship of employer and employee subsists during the period of suspension or put off duty. This proposition is very well established by catena of judicial pronouncements. However, we would like to refer to the latest decision of the Hon'ble Apex Court rendered in Cap. M. Paul Anthony v. Bharat Gold Mines Limited and another, (1999) 3 SCC 679.

6. There is no dispute about the fact that the subsistence allowance was not paid to the employee. The relationship of employer and employee in the present case is governed by Posts & Telegraphs Extra-Departmental

Agents (Conduct and Service) Rules, 1964 ('the Rules' for short). The status of an Extra Departmental Agent is that of a Government servant holding of civil post and is entitled to the protection under Article 311 (2) of the Constitution of India. Rule 9 (3) of the Rules provides that an employee shall not be entitled to any allowance for the period of "put off duty". It is, therefore, clear that an employee shall not be entitled to any allowance for the period for which he was kept off duty under this rule. The learned advocate for the employee has, however, submitted that the petitioner in the second petition (employee) is entitled to full backwages as the departmental inquiry proceedings are held vitiated by the CAT-A. He has also criticized that the direction of the CAT-A for payment of lump-sum amount of Rs.3,000/towards subsistence allowance representing ex-gratia payment for the past period. It may be noted that the questions of award of backwages and reinstatement from the date the employee was put off duty have been directed to be decided depending upon the result of the departmental inquiry as a de-novo inquiry has been directed by the CAT-A. Since the question of backwages and reinstatement are kept open by the CAT-A, we are not inclined to interfere with such directions of the CAT-A in the impugned order at this stage. Again, in view of the peculiar facts and special circumstances obtainable in the present case and also with regard to the type and the nature of the job of the employee and also the directions contained in the impugned order, we deem it expedient that the disciplinary authority shall have to take appropriate decision in this regard on completion of the disciplinary proceedings, in the event of exoneration of the employee from the charges against him. We, therefore, find no substance, at this stage, even in the second petition at the instance of the employee. In our opinion, therefore, both the petitions deserve the same fate. So common fate will be rejection of both the petitions. Accordingly, both the petitions are rejected. Interim relief granted in Special Civil Application No. 3297 of 1998 stands vacated. Rule issued in both the petitions is discharged with no order as to costs.

7. As Special Civil Application No. 3297 of 1998 is rejected and interim relief granted in the petition is vacated, Miscellaneous Civil Application No.688 of 1999 preferred for vacating the interim relief, does not survive. Hence, Misc. Civil Application No. 688 of 1999 is also rejected.

(J.N. Bhatt, J.)

17.4.2001. (A.M. Kapadia, J.)

(karan)